

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

THIS DOCUMENT RELATES TO:

Carolyn Mackey

(0:17-cv-04637-JNE-FLN)

PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS

COMES NOW Plaintiff for the above-captioned action to hereby opposes the motion to dismiss of Defendants 3M Company and Arizant Healthcare, Inc. (“Defendants” collectively). The motion to dismiss and accompanying brief in support are Docs. 1189 and 1191 (“Motion” collectively).

Defendants have asked the Court to dismiss this action with prejudice for failure to comply with the Court’s Pretrial Order No. 14 (“PTO 14”), which requires a plaintiff to serve a completed and signed Plaintiff Fact Sheet (“PFS”), medical authorization, and supporting documents.

PLAINTIFF’S ACTION SHOULD NOT BE DISMISSED WITH PREJUDICE

Plaintiff has yet to return the documents set forth by this Court’s PTO 14. Plaintiff is aware of the obligations regarding completing and serving PFS, medical authorization, and supporting documents, pursuant to PTO 14. However, to be precise, the undersigned counsel is without any knowledge of circumstances that may preclude Plaintiff from responding to the counsel’s contact attempts and efforts or completing the Court mandated

PFS and medical authorization. The undersigned counsel attempted to reach Plaintiff numerous times including but not limited to the following:

- October 17, 2017 – Mailed PFS and medical authorization;
- November 1, 2017 – Left a voicemail re: PFS and her obligations set forth in PTO 14;
- November 29, 2017 – Sent a follow-up letter re: PFS;
- December 7, 2017 – Ms. Mackey informed Bernstein Liebhard LLP that she will be returning the PFS shortly;
- December 14, 2017 – Left a voicemail re: PFS;
- January 6, 2018 – Sent a follow-up letter re: PFS;
- January 20, 2018 – Left a voicemail re: PFS;
- February 2, 2018 – Left a voicemail re: PFS;
- March 20, 2018 – Sent a follow-up letter re: PFS;
- April 6, 2018 – Left a voicemail advising Plaintiff that Defendants moved to dismiss her case with prejudice for failure to comply with PTO 14;

In light of the foregoing, the undersigned counsel respectfully seeks a 120-day extension on PTO 14. Nevertheless, if the Court deems dismissal of Plaintiff's action to be proper, then they should be dismissed without prejudice granting an opportunity for Plaintiff to reinstate her action.

DATED: April 10, 2018

Respectfully submitted,

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